

## Message Text

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ORIGIN AGRE-00

INFO OCT-01 IO-13 ISO-00 CEA-01 CIAE-00 COME-00  
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/169 R

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INTERIOR/HANDERSON  
LABOR/DPARKER/BBENNETT  
STATE/HKOPP/DPATTERSON  
TREAS/CBARBOUR/WWARTHIN  
STR/BSEASTRUM  
USDA/GWHITE

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P 162354Z JUN 78  
FM SECSTATE WASHDC  
TO USMISSION GENEVA PRIORITY

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E.O. 11652: N/A

TAGS: MTN

SUBJECT:MTN DAIRY SUBGROUP MEETING, JUNE 19, 1978

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1. THE TRADE POLICY STAFF COMMITTEE HAS APPROVED THE POSITION PAPER (TPSC 78-78) FOR THE SUBJECT MEETING AS FOLLOWS:

PROBLEM. THE SUBGROUP WILL MEET ON JUNE 19 AND 20, RECESS,  
AND MEET AGAIN THE END OF THE FOLLOWING WEEK, TO ATTEMPT TO  
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PUT INTO NEAR FINAL FORM THE TEXT OF AN INTERNATIONAL DAIRY  
ARRANGEMENT. THE MAJOR ISSUES TO BE RESOLVED PERTAIN TO  
THE LEGAL IMPLICATIONS OF CERTAIN PROVISIONS VIS-A-VIS THE  
GATT (DISPUTE SETTLEMENT, THE GATT STATUS OF TRADE COMMIT-  
MENTS PURSUANT TO THE ARRANGEMENT, ENFORCEMENT OF GENERAL  
OBLIGATIONS AS OPPOSED TO SPECIFIC TRADE COMMITMENTS, AND  
PROVISIONS FOR STANDARDS, SAFEGUARDS, AND EXPORT SUBSIDIES).

AN ADDITIONAL LEGAL ISSUE IS THE POSSIBILITY OF SELECTIVE ADHERENCE TO PROVISIONS OF THE ARRANGEMENT BY INDIVIDUAL COUNTRIES. THE LEVEL OF MINIMUM EXPORT PRICES FOR NFDM AND BUTTERFAT IS NOT YET EXPECTED TO BE ADDRESSED.

2. U.S. OBJECTIVES: (UNCHANGED FROM TPSC 78-66).

3. U.S. POSITION:

A) THE US DEL SHOULD CONTINUE TO BE GUIDED BY INSTRUCTIONS PROVIDED FOR THE MAY 30 MEETING OF THE SUB-GROUP (STATE 3550). SUPPLEMENTARY GUIDANCE CONCERNING OUTSTANDING LEGAL ISSUES IS PROVIDED BELOW.

B) DEL SHOULD AGAIN USE OWN INITIATIVE IN SUGGESTING DRAFTING CHANGES COMPATIBLE WITH US OBJECTIVES, AND MAY AGREE TO SUBSTANTIVE DRAFTING CHANGES ON AN AD REFERENDUM BASIS. - - -

4. DISCUSSION:

A) DISPUTE SETTLEMENT. IT IS LOGICAL AND UNOBJECTION-ABLE THAT THE PROPOSED COMMITTEES (ADMINISTERING THE POWDER AND BUTTERFAT PROTOCOLS) AND THE COUNCIL HAVE THE ABILITY TO DISCUSS PROBLEMS THAT ARISE BETWEEN PARTICIPANTS, PARTICULARLY WHEN SUCH PROBLEMS THREATEN THE WITH-LIMITED OFFICIAL USE

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DRAWAL OF ONE OR MORE PARTICIPANTS FROM THE AGREEMENT. CLEARLY THE VIABILITY OF THE ARRANGEMENT ITSELF CAN BE AT RISK IN SUCH CASES AND THE MATTER OF LEGITIMATE CONCERN TO ALL PARTICIPANTS.

5. IDEALLY, SUCH MATTERS COULD BE WORKED OUT WITHIN THE FRAMEWORK OF THE DAIRY ARRANGEMENT. IF NOT, THERE ARISES THE ISSUE OF WHETHER GATT ARTICLE 22-23 PROCEDURES WOULD BE APPLICABLE TO THE DAIRY AGREEMENT OBLIGATIONS. WE CANNOT FULLY FORESEE PRECISELY HOW ARTICLE 22-23 MIGHT BE USED - E.G., WHETHER, IN A CASE WHERE A COUNTRY VIOLATED A MINIMUM PRICE, A GATT 23 PANEL COULD ASSESS DAMAGES AND REQUIRE COMPENSATION. PRESUMABLY, A PROTOCOL ON MINIMUM PRICES WOULD BE SELF-CONTAINED AND NOT LINKED TO SPECIFIC GATT-BOUND TRADE CONCESSIONS. IF WITHDRAWAL OF CONCESSIONS IS NOT A LOGICAL REMEDY, IT IS NOT CLEAR THAT OTHER REMEDIES COULD BE FOUND CONSISTENT WITH THE PROVISIONS OF ARTICLE 23. WE DO KNOW THAT TO DATE NO INTERNATIONAL COMMODITY AGREEMENT HAS HAD RECOURSE TO ARTICLE 22-23 PROCEDURES, ALTHOUGH UNDER ARTICLE 23(1)(B) OR (C) A PARTICIPANT OF THE PRESENT GATT SKIM MILK POWDER AGREEMENT COULD PROBABLY INVOKE SUCH PROCEDURES.

6. WE WOULD PREFER THAT THERE BE NO REFERENCE ONE WAY OR ANOTHER TO ARTICLE 22-23 PROCEDURES - I.E. NO EXPLICIT ASSURANCE THAT THEY WOULD OR WOULD NOT APPLY. THE ISSUE WOULD SIMPLY BE WORKED OUT IN THE CONTEXT OF FUTURE DISPUTES. PARA. V(F)(III) SHOULD THEREFORE BE DELETED, AS SHOULD PROPOSED PARA. V(F)(IV) IN REV. 5. THE REMAINDER

OF PARA. V (F) WOULD BE SATISFACTORY IF IT DID NOT PREJUDICE COUNTRIES' RIGHTS TO GO DIRECTLY TO ARTICLE 22-23 IF THEY CHOOSE TO DO SO. THUS, WE RECOMMEND:

1) CLARIFYING THAT NOTHING IN PARA V(F) SHOULD PREVENT COUNTRIES FROM UTILIZING GATT PROCEDURES, OR 2) DELETING PARAV(F) ALTOGETHER, AS PER THE EXISTING GATT LIMITED OFFICIAL USE

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DAIRY ARRANGEMENT.

7. FYI: IF THIS APPROACH DOES NOT SATISFY THE EC, THE LATTER IS, OF COURSE, FREE TO MAKE ITS CONCESSIONS CONDITIONAL ON CONTINUATION OF AN IDA (GENEVA 8673, PARA 9) OR OTHER DESIDERATA. HOWEVER, THIS WOULD BE, IN OUR VIEW, AN UNFORTUNATE STEP SINCE CONDITIONAL CONCESSIONS WOULD NOT HAVE THE INHERENT VALUE OF UNCONDITIONAL ONES AND WOULD THEREFORE TEND TO LIMIT OVERALL PROGRESS IN NEGOTIATIONS. SUCH CONCESSIONS WOULD ALSO MAKE NEGOTIATIONS MORE DIFFICULT IF THEY ENCOURAGED GROUPS IN OTHER COUNTRIES TO INSIST THAT RESTRICTIVE CONDITIONS BE ADDED TO TRADE CONCESSIONS AFFECTING THEIR SPECIFIC INTERESTS. END FYI. - -

8. B) CHEESE PROTOCOL: WE UNDERSTAND THAT "CONCERTED DISCIPLINES" HAVE BEEN ELIMINATED IN REV. 5 OF THE DAIRY ARRANGEMENT. DEL SHOULD SEEK TO CLARIFY THE MEANING OF WHAT IS LEFT IN THE CHEESE PROTOCOL, CONSISTENT WITH PAST INSTRUCTIONS IN THIS AREA.

9. C) PARTIAL PARTICIPATION IN AN IDA: IF ISSUE ARISES, THE US DEL SHOULD STATE THAT PARTIAL OR SELECTIVE PARTICIPATION IN THE PROTOCOLS OF THE IDA SHOULD BE PERMITTED. IN LIGHT OF THE DIVERGENCES OF VIEW ON KEY ISSUES, THIS MAY BE THE ONLY WAY THAT SOME COUNTRIES WILL BE ABLE TO ADHERE TO THE ARRANGEMENT. TO INSIST ON 100 PERCENT PARTICIPATION MAY BE TANTAMOUNT TO LOSING COMPLETELY CERTAIN ARRANGEMENTS THAT ARE AGREED BY ALL COUNTRIES AS BEING DESIRABLE OR WORTH TRYING.

10. D) FOB-CIF PRICING: IF CANADIAN DEL RAISES FOB PRICING ISSUE, MTN DEL MAY ACCEPT FOB US-CANADIAN PORT FOR LIMITED OFFICIAL USE

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DETERMINATION OF COMPLIANCE WITH OBLIGATIONS IN MINIMUM  
PRICE SITUATION. NEWSOM

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## Message Attributes

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**Executive Order:** N/A  
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